

111TH CONGRESS
1ST SESSION

H. R. 2927

To authorize the imposition of a tax on imports from any country that employs indirect taxes and grants rebates of the same upon export and to authorize compensatory payments to eligible United States exporters to neutralize the discriminatory effect of such taxes paid by such exporters if United States trade negotiating objectives regarding border tax treatment in World Trade Organization negotiations are not met.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2009

Mr. PASCRELL (for himself, Mr. JONES, Mr. MICHAUD, Ms. KAPTUR, Mr. ROTHMAN of New Jersey, Mr. BARRETT of South Carolina, Mr. WESTMORELAND, and Ms. SUTTON) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To authorize the imposition of a tax on imports from any country that employs indirect taxes and grants rebates of the same upon export and to authorize compensatory payments to eligible United States exporters to neutralize the discriminatory effect of such taxes paid by such exporters if United States trade negotiating objectives regarding border tax treatment in World Trade Organization negotiations are not met.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Border Tax Equity
3 Act of 2009”.

4 **SEC. 2. FINDINGS AND DECLARATIONS OF POLICY.**

5 (a) FINDINGS.—Congress makes the following find-
6 ings:

7 (1) The United States largely relies on a direct
8 tax system, whereas 150 countries currently employ
9 one particular form of indirect tax known as value-
10 added taxes (VAT) as well as direct taxes. The
11 worldwide VAT tax average in 2005 was 15.7 per-
12 cent, and in countries of the European Union it
13 ranges between 15 and 25 percent.

14 (2) Under the rules of the World Trade Organi-
15 zation (WTO), direct taxes, such as corporate in-
16 come taxes, if rebated or refunded upon the export
17 of goods are viewed as export subsidies and prohib-
18 ited on most goods and are at least potentially ac-
19 tionable on all goods. However, indirect taxes, such
20 as sales taxes and VAT, may be rebated or refunded
21 upon the export of goods and such rebate or refund
22 is not defined as constituting a subsidy and hence is
23 not actionable under WTO rules.

24 (3) At present, there are no WTO rules on sub-
25 sidies as applied to trade in services. However, a
26 number of countries currently impose taxes on the

1 import of services and exempt or rebate or refund
2 taxes upon the export of services, to the disadvan-
3 tage of United States services providers.

4 (4) The disparate treatment of border taxes
5 detrimentally affects United States agricultural pro-
6 ducers, manufacturers, and service providers in
7 that—

8 (A) refunds of indirect taxes effectively act
9 as export subsidies to foreign exporters; and

10 (B) United States exporters are subject to
11 double taxation, by paying direct taxes on do-
12 mestic production in the United States and hav-
13 ing their exported product or service face a bor-
14 der tax in the importing country consisting of
15 indirect taxes.

16 (5) Foreign governments paid their producers
17 an estimated \$369 billion of VAT rebates on goods
18 exported to the United States. Foreign governments
19 collected from United States producers an estimated
20 \$122.4 billion of VAT equivalent taxes on their im-
21 ported goods. The combined goods and services dis-
22 advantage in 2007 was \$474 billion.

23 (6) For more than 40 years, United States
24 businesses have complained of border tax inequity

1 and, since 1968, prior United States Administra-
2 tions and Congresses have sought to resolve it.

3 (7) Congress has repeatedly recognized the
4 prejudicial effect of the disparate treatment of bor-
5 der taxes with respect to goods and has directed the
6 United States to seek a negotiated solution:

7 (A) In passing the Trade Act of 1974 (19
8 U.S.C. 2101 et seq.), Congress sought “revision
9 of GATT articles with respect to the treatment
10 of border adjustments for international taxes to
11 redress the disadvantage to countries relying
12 primarily on direct rather than indirect taxes
13 for revenue needs.”.

14 (B) In section 1101(b)(16) of the Omnibus
15 Trade and Competitiveness Act of 1988 (19
16 U.S.C. 2901(b)(16)) and section 2102(b)(15) of
17 Bipartisan Trade Promotion Authority Act of
18 2002 (19 U.S.C. 3802(b)(15)), Congress de-
19 clared that a principal trade negotiating objec-
20 tive of the United States is to obtain a revision
21 of WTO rules with respect to the treatment of
22 border taxes in order to redress the disadvan-
23 tage to countries relying primarily on direct
24 taxes for revenue rather than indirect taxes.

1 (8) The disparate treatment of border taxes is
2 arbitrary, inequitable, causes economic distortions
3 based only on the type of tax system used by a coun-
4 try, and is a primary obstacle to more balanced
5 trade relations between the United States and its
6 major trading partners.

7 (b) DECLARATIONS OF POLICY.—Congress declares
8 the following:

9 (1) It is critically necessary that the issue of
10 border taxes be addressed and resolved in WTO ne-
11 gotiations, whether in the ongoing Doha Develop-
12 ment Round of WTO negotiations or subsequent
13 WTO negotiations.

14 (2) If such WTO negotiations fail to achieve the
15 United States trade negotiating objective of revising
16 WTO rules with respect to the treatment of border
17 taxes in order to redress the disadvantage to coun-
18 tries relying primarily on direct taxes for revenue
19 rather than indirect taxes, then effective action
20 through legislation is warranted given the massive
21 and inequitable distortions to trade that United
22 States agricultural producers, manufacturers, and
23 service providers face as a result of border taxes.

1 **SEC. 3. REPORT ON RESULTS OF WTO NEGOTIATIONS TO**
2 **REVISE WTO RULES REGARDING BORDER**
3 **TAXES.**

4 (a) REPORT REQUIRED.—Not later than 60 days
5 after the completion of WTO negotiations, or by January
6 1, 2011, whichever occurs first, the United States Trade
7 Representative shall submit to Congress a report certi-
8 fying whether or not each of the United States trade nego-
9 tiating objectives regarding border tax treatment, as speci-
10 fied in subsection (b), has been met as a result of such
11 negotiations.

12 (b) U.S. TRADE NEGOTIATING OBJECTIVES RE-
13 GARDING BORDER TAX TREATMENT SPECIFIED.—The
14 United States trade negotiating objectives regarding bor-
15 der tax treatment specified in this subsection are the fol-
16 lowing:

17 (1) With respect to trade in goods, the revision
18 of WTO rules with respect to the treatment of bor-
19 der adjustments for internal taxes to redress the dis-
20 advantage to countries relying primarily on direct
21 taxes for revenue rather than indirect taxes, as pro-
22 vided for in section 2102(b)(15) of Bipartisan Trade
23 Promotion Authority Act of 2002 (19 U.S.C.
24 3802(b)(15)).

25 (2) With respect to trade in services—

1 (A) the elimination of the disadvantage in
 2 trade in services that exists for countries rely-
 3 ing primarily on direct taxes that are not ad-
 4 justed at the border rather than indirect taxes
 5 that are adjusted at the border; and

6 (B) the revision of WTO rules regarding
 7 trade in services to ensure that such rules do
 8 not result in disparate treatment of border ad-
 9 justments for internal taxes based on the direct
 10 or indirect nature of such taxes.

11 (c) DEFINITION.—In this section, the terms “WTO
 12 negotiations” and “negotiations” mean the ongoing Doha
 13 Development Round of World Trade Organization negotia-
 14 tions or subsequent WTO negotiations that may result in
 15 revisions to WTO rules to meet the United States trade
 16 negotiating objectives regarding border tax treatment, as
 17 specified in subsection (b).

18 **SEC. 4. TAX ON IMPORTS FROM FOREIGN COUNTRIES WITH**
 19 **AN INDIRECT TAX SYSTEM.**

20 Subtitle D of the Internal Revenue Code (26 U.S.C.
 21 4461 et seq.) is amended by adding at the end the fol-
 22 lowing new subchapter G:

1 **“Subchapter G—Tax on Imports From For-**
2 **eign Countries With An Indirect Tax Sys-**
3 **tem**

“Sec. 4491. Imposition of tax.

4 **“SEC. 4491. IMPOSITION OF TAX.**

5 “(a) GENERAL RULE.—There is hereby imposed a
6 tax on imports of goods and services from any foreign
7 country that employs an indirect tax system and grants
8 rebates of indirect taxes paid on goods or services exported
9 from that country.

10 “(b) AMOUNT OF TAX.—The amount of the tax im-
11 posed by subsection (a) on an imported good or service
12 shall be an amount equal to the excess of—

13 “(1) the indirect taxes that are rebated or not
14 paid on the good or service upon its export, over

15 “(2) any indirect taxes imposed on the good or
16 service at the border of the United States.

17 “(c) LIABILITY AND TIME OF IMPOSITION OF TAX.—

18 “(1) LIABILITY.—The tax imposed by sub-
19 section (a) on a good or service shall be paid by the
20 importer of such good or service.

21 “(2) TIME OF IMPOSITION.—The tax imposed
22 by subsection (a) shall be imposed on imports at the
23 time of entry.

1 “(d) PERIOD OF APPLICABILITY.—The tax imposed
2 by subsection (a) shall apply during the period beginning
3 as prescribed in section 6(a)(1) of the Border Tax Equity
4 Act of 2009 and ending on the date on which the United
5 States Trade Representative certifies to Congress that the
6 United States trade negotiating goals of equitable border
7 tax treatment have been met.

8 “(e) SPECIAL ACCOUNT.—The tax on imports under
9 subsection (a) shall be collected by the Bureau of Customs
10 and Border Protection and deposited into a special ac-
11 count. This special account shall be the source of pay-
12 ments to qualified United States exporters under section
13 314(b) of the Tariff Act of 1930.

14 “(f) DEFINITIONS.—For purposes of this sub-
15 chapter—

16 “(1) SECRETARY.—The term ‘Secretary’ means
17 the Secretary of Homeland Security.

18 “(2) IMPORTER.—The term ‘importer’ means—

19 “(A) as such term relates to imports of
20 goods, one of the parties eligible to file the re-
21 quired customs entry documentation or infor-
22 mation pursuant to section 484(a)(2)(B) of the
23 Tariff Act of 1930 (19 U.S.C. 1484(a)(2)(B)),
24 and

1 “(B) as such term relates to imports of
2 services, the importer of the service as defined
3 by the Secretary in rules and regulations pro-
4 mulgated under this subchapter.

5 “(3) TIME OF ENTRY.—The term ‘time of
6 entry’ means—

7 “(A) as relates to imports of goods, the
8 time generally specified in section 484(a)(2)(A)
9 of the Tariff Act of 1930 (19 U.S.C.
10 1484(a)(2)(A)) and prescribed in regulations
11 (19 C.F.R. 141.68), and

12 “(B) as relates to imports of services, the
13 time specified by the Secretary in rules and reg-
14 ulations promulgated under this subchapter.

15 “(4) INDIRECT TAX SYSTEM AND GRANTS RE-
16 BATES OF INDIRECT TAXES.—A foreign country em-
17 ploys an indirect tax system and grants rebates of
18 indirect taxes paid on goods or services exported
19 from that country if such country imposes indirect
20 taxes (including sales taxes and value-added taxes
21 (VAT)) on goods or services, and permits a rebate
22 of such indirect taxes paid on goods or services ex-
23 ported from such country.

24 “(5) VALUE-ADDED TAXES (VAT).—The term
25 ‘value-added taxes’ means an indirect general con-

1 sumption tax that is levied by the exporting country
 2 on the value added to goods and services in that
 3 country at multiple stages of the production and
 4 supply chain. This type of tax is also referred to as
 5 a goods and services tax (GST).

6 “(g) REGULATIONS.—The Secretary may prescribe
 7 such rules and regulations as are necessary to carry out
 8 this section.”.

9 **SEC. 5. PAYMENTS TO UNITED STATES EXPORTERS TO**
 10 **NEUTRALIZE DISCRIMINATORY EFFECT OF**
 11 **BORDER TAXES IMPOSED BY IMPORTING**
 12 **COUNTRIES.**

13 Part II of title III of the Tariff Act of 1930 (19
 14 U.S.C. 1305 et seq.) is amended by inserting after section
 15 313 the following:

16 **“SEC. 314. PAYMENTS TO UNITED STATES EXPORTERS TO**
 17 **NEUTRALIZE DISCRIMINATORY EFFECT OF**
 18 **BORDER TAXES IMPOSED BY IMPORTING**
 19 **COUNTRIES.**

20 “(a) PAYMENTS REQUIRED.—

21 “(1) IN GENERAL.—Upon exportation of goods
 22 or services from the United States to any foreign
 23 country that employs an indirect tax system and im-
 24 poses or applies indirect taxes on imports of goods
 25 or services at the border, the Secretary of Homeland

1 Security, acting through the Commissioner respon-
2 sible for the Bureau of Customs and Border Protec-
3 tion, shall, if requested by the exporter, pay to the
4 exporter an amount equal to the amount of indirect
5 taxes that the importing foreign country imposes or
6 applies at the border to such goods or services,
7 minus any United States taxes paid on such goods
8 or services that have been rebated or refunded upon
9 exportation.

10 “(2) INFORMATION TO BE INCLUDED IN RE-
11 QUEST.—An exporter who requests a payment under
12 paragraph (1) shall, in such request, identify the in-
13 direct taxes imposed by the importing foreign coun-
14 try and present proof of the payment of such taxes
15 to the importing foreign country’s authorities within
16 a reasonable period of time after exportation of the
17 goods or services.

18 “(b) SOURCE OF PAYMENTS.—

19 “(1) SPECIAL ACCOUNT.—The payments re-
20 quired under subsection (a) shall be paid from
21 amounts contained in the special account authorized
22 under section 4491(e) of the Internal Revenue Code
23 of 1986.

24 “(2) APPROPRIATION OF ADDITIONAL
25 AMOUNTS.—To the extent that, at any time,

1 amounts contained in the special account described
2 in paragraph (1) are inadequate to make payments
3 required under subsection (a), there are hereby ap-
4 propriated, out of any money in the Treasury of the
5 United States not otherwise appropriated, such sums
6 as may be necessary for such purpose.

7 “(c) PERIOD OF APPLICABILITY.—The requirement
8 to make payments under subsection (a) shall apply during
9 the period beginning as prescribed in subsection (a)(2) or
10 (b) of section 6 of the Border Tax Equity Act of 2009,
11 as the case may be, and ending on the date on which the
12 United States Trade Representative certifies to Congress
13 that each of the United States trade negotiating goals re-
14 garding border tax treatment have been met.

15 “(d) REGULATIONS.—The Secretary of Homeland
16 Security is authorized to prescribe such rules and regula-
17 tions as are necessary to carry out the provisions of this
18 section.

19 “(e) DEFINITIONS.—In this section:

20 “(1) INDIRECT TAX SYSTEM AND IMPOSES OR
21 APPLIES INDIRECT TAXES ON IMPORTS OF GOODS OR
22 SERVICES AT THE BORDER.—A foreign country em-
23 ploys an indirect tax system and imposes or applies
24 indirect taxes on imports of goods or services at the
25 border if such country imposes indirect taxes (in-

1 including sales taxes and value-added taxes (VAT)) on
2 goods or services, and imposes or applies such indi-
3 rect taxes on imports of goods or services at the bor-
4 der.

5 “(2) VALUE-ADDED TAXES (VAT).—The term
6 ‘value-added taxes’ means an indirect general con-
7 sumption tax that is levied by the exporting country
8 on the value added to goods and services in that
9 country at multiple stages of the production and
10 supply chain. This type of tax is also referred to as
11 a goods and services tax (GST).”.

12 **SEC. 6. EFFECTIVE DATES.**

13 (a) GENERAL EFFECTIVE DATE.—If, pursuant to
14 subsection (a) of section 3 of this Act, the United States
15 Trade Representative fails to certify to Congress by the
16 applicable date specified in such subsection that each of
17 the United States trade negotiating objectives regarding
18 border tax treatment described in subsection (b) of such
19 section has been met as a result of WTO negotiations,
20 then—

21 (1) section 4491 of the Internal Revenue Code
22 of 1986, as added by section 4 of this Act, shall take
23 effect 90 days after such date; and

1 (2) subject to subsection (b), section 314 of the
2 Tariff Act of 1930, as added by section 5 of this
3 Act, shall take effect 120 days after such date.

4 (b) EARLIER EFFECTIVE DATE FOR EXPORTS OF
5 SERVICES.—

6 (1) IN GENERAL.—If, pursuant to subsection
7 (a) of section 3 of this Act, the United States Trade
8 Representative fails to certify to Congress by Janu-
9 ary 1, 2010, that each of the United States trade
10 negotiating objectives regarding border tax treat-
11 ment described in subsection (b) of such section has
12 been met as a result of WTO negotiations, then sec-
13 tion 314 of the Tariff Act of 1930, as added by sec-
14 tion 5 of this Act, shall take effect on January 1,
15 2010, with respect to exports of services from the
16 United States as described in section 314 of the
17 Tariff Act of 1930.

18 (2) APPROPRIATION OF AMOUNTS.—There are
19 hereby appropriated, out of any money in the Treas-
20 ury of the United States not otherwise appropriated,
21 such sums as may be necessary for making pay-
22 ments with respect to exports of services from the
23 United States in accordance with section 314 of the
24 Tariff Act of 1930, as added by section 5 of this
25 Act, until such time as the special account author-

1 ized under subsection (e) of section 4491 of the In-
2 ternal Revenue Code of 1986, as added by section 4
3 of this Act, is established and amounts contained in
4 the special account are adequate to make such pay-
5 ments.

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